THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.24122 OF 1998

Between:

The Depot Manager, APSRTC, Medak

……Petitioner

Vs.

C.S.Rao, Conductor and another

……..Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.24122 OF 1998

O R D E R:

The writ petition is filed for a writ of Mandamus to set aside the award, dated 11.10.1996 made by the Presiding Officer of Labour Court-II, Hyderabad, in I.D.No.139 of 1993, whereby, he set aside the punishment of removal of respondent No.1 and directed his reinstatement with all attendant benefits like continuity of service, but only with 25% backwages.

The first respondent is a Conductor in Andhra Pradesh State Road Transport Corporation (for short 'the Corporation'). In connection with an alleged mis-conduct committed by him on 14.08.1992, when he was on duty, on the route Jogipet to Medak, a charge sheet was issued to him on 24.08.1992. The two charges framed against him are extracted below:

1) For having re-issued ticket Nos.275/529373 & 374 of Rs.1.50 ps. deno, to a batch of two passengers, duly connecting the requisite fare from them (Rs.1.50 ps

per head), who were found alighting at Chintakunta, stage No.8 having boarded the bus at Jogipet, stage No.9, whereas, the said tickets were already issued by you, and were accounted against Stage No.7, in town trip, in the previous trip, as can be seen from the SR.No.Ao/9515995, dated 14.08.1992, which constitutes mis-conduct under Regulation No.28 (xxiii) of APSRTC Employees (Conduct) Reg.1963 and

2) For your failure to close the SR against stage No.8, which constitutes mis-conduct under Reg.No.28 (xxxii) of the APSRTC Employees (Conduct) Reg.1963."

After holding departmental enquiry, Respondent No.1 was removed from service on the finding that he is guilty of both the charges. The appeal filed by the first respondent before the Divisional Manager, Medak was rejected on 17.06.1993 and consequently, he approached the Labour Court by raising a dispute under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short "the Act"). The Labour Court by the award impugned in this writ petition, set aside the order of removal and granted the relief, which is already mentioned herein above, to respondent No.1. Questioning the said award, the Corporation filed the present writ petition.

Sri V.Padmanabha Rao, learned Standing Counsel invited my attention to the finding of the Labour Court to page 3 of the award, in which, it is stated that the finding of guilt recorded by the Enquiry Officer is un-assailable, but, however, taking into consideration of the totality of the facts and circumstances and the amounts involved, the punishment of removal was set aside as the same was dis-proportionate to the gravity of the proven mis-conduct.

The learned counsel for the petitioner argued having rendered the said finding against respondent No.1, the Labour Court committed

a serious error in interfering with the penalty imposed on respondent No.1. He relied on the judgment of the Supreme Court in **Depot Manager, APSRTC VS. B.Swamy**[1].

Sri A.K.Jaya Prakash Rao, learned counsel for the first respondent, however, submitted that under Section 11 (A) of the Act, the Labour Court has power to modify the punishments and that in the instant case, having regard to the fact that the tickets allegedly re-issued were 'two', which are of very small denominations, the Labour Court applied the doctrine of proportionality and that such a discretion exercised by the Labour Court is not liable for interference by this Court in exercise of the power of judicial review.

I have given serious thought to the respective submissions of the learned counsel.

The contention of the learned counsel for the petitioner that mis-conduct involving mis-appropriation, whether of minor or major amounts, warrants severe punishment is unexceptionable. Ordinarily, in a case where an employee is found guilty of financial misdemeanor, the courts are loath to interfere with the quantum of penalties imposed on them.

This Court is conscious of the fact that it is the propensity of the employee to mis-appropriate, which is more relevant than the quantum of the amount mis-appropriated. Ordinarily, the courts/Tribunals ought not to show lenience in favour of persons who are found guilty of financial embezzlements. However, in the instant case, I am not inclined to interfere with the award passed by the Labour Court for the following reasons:

1) The award of the Labour Court is partially given effect to by reinstating respondent No.1 into service and it is almost 11 years, since he is working following his reinstatement. It is not brought to my

notice by the learned Standing Counsel that respondent No.1 has subsequently indulged in any instance of mis-appropriation and

2) the learned counsel for the first respondent submitted that his client is prepared to forego the backwages awarded by the Labour Court in his favour.

On the facts and circumstances of this case, I am not inclined to interfere with the discretion exercised by the Labour Court to avoid causing hardship to respondent No.1, at this distance of time.

For the aforementioned reasons, the writ petition is partly allowed. The award of the Labour Court to the extent it has awarded 1/4th of the backwages is set aside and the writ petition is dismissed to the extent of the rest of the award. No order as to costs.

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C.V.NAGARJUNA REDDY J.,

Dt.27.09.2007
tjs

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[1]) 2007(5) ALD 41 (SC)